LINDA RUBIN & ASSOCIATES

certified shorthand reporters
189 west madison street chicago, Illinois 60602 312-782-8321

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ANTONIO CIPOLLONE, individually, and as Executor of the Estate of Rose D. Cipollone.

Plaintiffs.

vs. No. 83-2864 SA

LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS INCORPORATED, a Virginia Corporation; and LOEW'S THEATRES, INC., a New York Corporation.

Defendants.

The deposition of EDWARD J NOHA, called by the Plaintiff for examination, pursuant to subpoena, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Karen E. Blakemore, CSR and Notary Public in and for the County of Cook and State of Illinois, on January 6, 1986, at 10:15 A.M., at One First National Plaza, Suite 5100, Chicago, Illinois.

Property of: Ness, Motley
Main PI File Room
Charleston, SC

2575873

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Supported by the UCSF Library

LINDA RUBIN & ASSOCIATES

certified shorthand reporters
189 west madison street chicago, Illinois 60602 312-782-8321

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ANTONIO CIPOLLONE, individually, and as Executor of the Estate of Rose D. Cipollone.	)	
Plaintiffs.	)	
vs.	)	No. 83-2864 SA
LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS INCORPORATED, a Virginia Corporation; and LOEW'S THEATRES, INC., a New York Corporation.	)	
Defendants.	)	

The deposition of EDWARD J NOHA, called by the Plaintiff for examination, pursuant to subpoena, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Karen E. Blakemore, CSR and Notary Public in and for the County of Cook and State of Illinois, on January 6, 1986, at 10:15 A.M., at One First National Plaza, Suite 5100, Chicago, Illinois.

85758874

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ANTONIO CIPOLLONE, individually, and as Executor of the Estate of Rose D. Cipollone,	)	
Plaintiffs,	)	
vs.	)	No. 83-2864 SA
LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS INCORPORATED, a Virginia Corporation; and LOEW'S THEATRES, INC., a New York Corporation,	)	
Defendants.	)	

The deposition of EDWARD J. NOHA, called by the Plaintiff for examination, pursuant to notice, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Karen E. Blakemore, CSR and Notary Public in and for the County of Cook and State of Illinois, on January 6, 1986, at 10:15 A.M., at One First National Plaza, Suite 5100, Chicago, Illinois.

85758875

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/gfhl0001

A P P E A R A N C E S

MESSRS. PORZIO, BROMBERG & NEWMAN
(163 Madison Avenue
Morristown, N.J. 07960) by:
MR. MARC EDELL
and
MS. JAN SILVERBERG,
Appeared on behalf of the Plaintiffs;

MESSRS. WEBSTER & SHEFFIELD
(1 Rockfeller Plaza
New York, N.Y. 10020) by:
MR. FRANCIS X. DEHN,
Appeared on behalf of the Defendant,
Liggett Group, Inc.;

MESSRS. BROWN, CONNERY, KULP, WILLE, PURNELL AND GREENE
(518 Market Street, P.O. Box 1449
Camden, N.J. 08101) by:
MR. DENNIS P. BLAKE,

A N D

MESSRS. SHOOK, HARDY & BACON
(Twentieth Floor, Mercantile Bank Tower
1101 Walnut
Kansas City, M.O. 64106) by:
MR. ANTHONY J. ANDRADE
and
MR. STEVEN C. PARRISH,
Appeared on behalf of the Defendant,
Philip Morris Incorporated;

MESSRS. SILLS, BECK, CUMMIS, ZUCKERMAN, RADIN & TISCHMAN, P.A.
(33 Washington Street
Newark, N.J. 01102) by:
MR. BARRY L. SHAPIRO,
Appeared on behalf of the Defendant,
Loew's Theatres, Inc.;

85758876

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Buttons http://www.industrydocuments.ucsf.edu/docs/gfhl0001

A P P E A R A N C E S (Continued)

MESSRS. WINSTON & STRAWN
(One First National Plaza, Suite 5100
Chicago, Illinois 60603) by:
MR. DAN K. WEBB,
Appeared on behalf of the Deponent,
Mr. Edward J. Noha;

MR. WILLIAM D. COURTNEY,
(CNA Plaza
Chicago, Illinois 60685)
Appeared on behalf of CNA Insurance
Company.

I N D E X

WITNESS:	DX	CX
Edward J. Noha		
By Mr. Edell:	6	

E X H I B I T S

NUMBER:	ID	ED
Plaintiff's Exhibit		
Noha No. 1	20	
Noha No. 2	26	
Noha Group No. 3	38	
Noha No. 4	43	
Noha No. 5	53	
Noha No. 6	60	
Noha No. 7	60	
Noha No. 8	63	
Noha No. 9	67	

C E R T I F I E D Q U E S T I O N S

(There were no certified questions.)

8575887

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

(WHEREUPON, the witness was first duly sworn.)

MR. EDELL: Mr. Noha, my name is Marc Edell. We introduced ourselves before we started. I'm an attorney and I represent the Plaintiffs in this action.

You are here pursuant to a subpoena issued out of the Federal Court here in Chicago. Subsequent to the issuance and service of that subpoena, there was a motion to quash that subpoena.

I don't know if you're aware of that. And there was a subsequent order entered by Judge Decker permitting us to take this deposition here today.

I assume that you've had an opportunity, and that you did in fact speak with Mr. Webb concerning this proceeding?

THE WITNESS: Yes.

MR. EDELL: You understand the nature and purpose of the deposition, sir?

THE WITNESS: In general, generally.

MR. EDELL: You understand that everything that you say will be taken down by

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

this lady to your left who's a Certified Shorthand Reporter and may be used at the time of the trial?

THE WITNESS: Yes; I do.

MR. EDELL: You understand that all of your responses must be audible. She cannot take down nods of the head; okay?

THE WITNESS: Yes.

MR. EDELL: If at any point in time you have a question, you want to speak to either Mr. Courtney or Mr. Webb, please feel free to do so.

If at any point in time you want to take a break, let us know. We'll be happy to accommodate you.

If you don't understand any of my questions, they don't make any sense to you, please tell me and I'll try to rephrase them because we are going to assume that once you give an answer to the question, you understood the question and you are accurately responding to it; do you understand that, sir?

THE WITNESS: I do.

85758879

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

WHEREUPON:

EDWARD J. NOHA,

called as a witness on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDELL:

Q What is your position with CNA today?

A Chairman and chief executive officer.

MR. WEBB: Mr. Edell, maybe at the outset, if you don't mind, in connection with the reference to Judge Decker's Order and because this may become somewhat of an issue as far as the scope of the deposition, if you don't mind, I'd like to at least publish, so we have it in the deposition, spread of record what I consider to be the relevant portions of that Order which are controlling for this deposition.

I'd like to have it -- I'm going to quote from Judge Decker's Order from Page 3 of the Order at this point, and have it in this particular record.

Now quoting from Judge Decker's

85758880

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Order of December 4th, 1985, on Page 3, beginning with the second paragraph:

"The Court, however, is sensitive to the need to avoid burdensome discovery. Rule 26-C authorizes the Court to limit discovery to remedy any undue burden.

Therefore, the Court ordered that the deposition of Mr. Noha be limited to questions concerning discussion or information passed between Mr. Noha and the common directors of CNA and Loew's Theatres, Inc. concerning health risks associated with smoking and CNA's decision to offer life insurance discounts to non-smokers.

If no such discussion occurred, and no relevant information was passed, Mr. Noha's deposition should be concluded quite quickly.

In the event that such discussions did occur, or relevant information was passed, Respondent may inquire further. Given these parameters, Mr. Noha's deposition should not exceed three-hours."

I simply, Mr. Edell, would like that on the record in connection with this

85758881

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz://www.industrydocuments.ucsf.edu/docs/gfhl0001

deposition; and you may proceed; and thank you for your courtesy.

MR. EDELL: My pleasure.

BY MR. EDELL:

Q How long have you been employed by CNA, sir?

A Since February, '75.

Q And what position did you hold at CNA at that time?

A Same as the present.

Q At any time did you become a member of the Board of Directors of Loew's Corporation?

A Yes; I did.

Q And when was that, sir?

A I'm going to guess that it was in '75 sometime. I can't recall the exact date.

Q Have you been a member of the Board of Directors of Loew's Corporation since that time?

A Yes.

Q From 1975 until 1982, have there been any individuals who were members of the Board of Directors of both Loew's Corporation and CNA other than yourself?

A Larry Tisch, Bob Tisch, and for -- Well,

85758882

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/gfhl0001

it would be Lester Pollak (phonetic).

Q Do you know whether or not Lester Pollak was also a member of the Board of Directors of those theatres?

A I don't.

I think you're going to have to help me with that. I get -- I tend to think of Loew's as Loew's, and sometimes Loew's Theatres; but I think he was a member of the Board of all the companies.

Q Do you recall whether or not both Preston Tisch and Lawrence Tisch were also members of the Board of Directors of CNA, Loew's Theatres, and Loew's Corporation?

A Yes. I believe they are.

Q And you know Curtis Judge?

A Yes; I do.

Q Curtis Judge was chief executive officer of Lorillard, is that correct, president of Lorillard?

A Yes.

I know he was president.

Q And you're aware that he was also a member of the Board of Directors of Loew's

85758883

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Corporation?

A Yes.

Q And who was Arthur Stevens?

A I don't know.

I don't recall ever having met Arthur Stevens. I may have. I believe he's associated with Lorillard.

Q In their Legal Department, sir?

A I honestly don't know. He may be.

Q Prior to coming here today, did you review any documents?

A No.

I had a brief meeting with --

Q -- Mr. Webb?

A (Continuing) -- Mr. Webb.

Q Did you discuss with Mr. Webb the contents of any of the documents that were produced pursuant to the subpoena?

A There were several documents that Mr. Webb showed me very briefly, and which I scanned, but did not go through carefully.

Q Did your review of those documents refresh your memory with respect to any particular events?

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Stud http://www.industrydocuments.ucsf.edu/docs/gfhl0001

A Very -- Somewhat, of course.

Q Do you recall what particular documents that you reviewed which refreshed your memory concerning certain events?

A I couldn't tell you at the moment.

I just looked at a couple, and I did it very quickly.

Q Do you recall there being a point in time when CNA considered offering preferred rates for non-smokers?

A Would you please restate that question?

Q Yes.

Do you remember that there came a point in time when CNA considered offering preferred rates for non-smokers for certain types of insurance policies?

A Yes; I do.

Q And do you recall what precipitated the question as to whether or not CNA should offer such a preferred policy for non-smokers?

A We began to see some activity in the marketplace where companies were either offering or talking about offering discounts.

Q Discounts for non-smokers?

85758885

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Butts Library http://www.industrydocuments.ucsf.edu/docs/gfhl0001

A For non-smokers.

Q What if anything did CNA do to explore the viability of offering such discounts?

A Initially we didn't do a great deal, because there didn't seem to be a lot of activity.

At a later date we began to gather competitive data in terms of those companies that were offering discounts, and began to try to assemble and explore whatever data they used to support their filings or base their discount upon.

Q Who at CNA initiated this process?

MR. PARRISH: Object to the form of the question.

BY MR. EDELL:

Q You may answer.

MR. WEBB: I object to the form of the question.

You may answer the question. Have you forgotten the question?

BY THE WITNESS:

A Let me have the question again.

MR. EDELL: Would you?

85758886

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

(WHEREUPON, the requested portion of the record was read.)

MR. WEBB: Can we state for the record by the way, that if there's any objection made to the form of the question or any other evidentiary basis, unless I instruct the witness not to answer, that the objection is made of record, and then the witness can go ahead and answer the question.

Is that acceptable as a procedure to follow here?

MR. EDELL: Absolutely.

MR. WEBB: Okay.

BY MR. EDELL:

Q Do you understand --

A Would you define better -- define for me the process you're --

Q Sure.

Whose decision was it to initiate the process to gather together information concerning what some of your competitors were doing in terms of offering preferred discounts for non-smokers?

85758887

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/gfhl0001

A It was a joint decision made by myself and my marketing vice president.

Q And who was your marketing vice president at that time?

A Philip Engle.

Q And when did you make that decision, sir?

A I can't recall the exact date.

Q Were there any discussions among the members of the Board of Directors of CNA concerning your proposal to look into this question of offering preferred discounts for non-smokers?

A No; there was not.

Q Do you recall whether or not at any point in time, from the initial process of considering whether or not to offer preferred rates for non-smokers, until such time that CNA actually did offer these preferred policies, that there were any discussions among the Board of Directors of CNA concerning offering such policies?

A Just to clarify your question, so I'm completely accurate, are you referring, when you say "the Board of Directors", to our formal Board meetings as this being --

85758868

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Q Are there --

A (Continuing) -- an agenda item, or all of the Board members, or --

Q All of the above, sir.

Either at a formal Board meeting, at a luncheon meeting, a breakfast meeting with one or two of the Board members or all of the Board members, or an ad hoc meeting; any of those?

A It was never discussed as a formal matter or a decision making process of any kind over the period of time.

At some stage Larry Tisch and probably Bob Tisch were aware of the fact that we were doing some research and looking at the possibility of offering a non-smokers discount.

3

Q At any point in time did you ever have any discussions with Curt Judge concerning offering of preferred discounts for non-smokers?

MR. SHAPIRO: Object to the form.

I don't know if it was referred to as preferred when talking about discounts.

BY MR. EDELL:

Q Sir, do you understand what I'm talking about by the term of preferred discounts for

85758869

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

non-smokers?

A Yes.

Q Can you explain that to Mr. Shapiro, please?

A A discount that we would offer to a classification; in this case, non-smokers over those who were smokers.

BY MR. EDELL:

Q All right. Now, let's get back to the question concerning any discussions that you might have had with Curt Judge concerning this discount.

A I don't recall any formal discussion, nor anything other than perhaps asking Curt if he had any material or data on the general subject of smoking/non-smoking, because we were attempting to look at data.

I believe it was the State Mutual Study that we were looking at.

Q You were aware during this entire period of time that you were considering offering these preferred discounts that Lorillard was in the business of selling cigarettes; correct?

A Correct.

Q And you were aware that one of the

85758850

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd://www.industrydocuments.ucsf.edu/docs/gfhl0001

questions which concerned Lorillard during that same period of time was the question of whether or not cigarette smoking caused disease in human beings?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A I can't really speak for Lorillard. My connection and my interface with Lorillard would be at a Loew's Board meeting, and that was all.

Q Do you recall any contacts with the Tobacco Institute?

MR. PARRISH: At all?

BY MR. EDELL:

Q You.

A Me?

Q Yes.

A No.

Q Do you recall directing anyone to speak with anyone at the Tobacco Institute concerning any subject?

A I don't recall that.

Q Do you recall there coming a point in

85758891

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttp://www.industrydocuments.ucsf.edu/docs/gfhl0001

time when Allstate decided to offer preferred discount rates for non-smokers?

A The Allstate Insurance Company?

Q Yes.

A I can't recall an exact date.

I probably have difficulty right now stating 100-percent whether they do or not; and I gather they do from the form of your question.

Q Okay.

A But I don't recall an exact date or time.

Q You had worked for Allstate, had you not, sir?

A Yes.

Q For how many years?

A Just over nineteen, nineteen-and-a-half years.

Q Beginning when?

A 1955.

Q And what positions did you hold with Allstate?

A I held a whole series of positions from beginning as an auditor and a controller all the way through executive vice president.

Q And prior to working with Allstate you

85758892

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/gfhl0001

worked with Metropolitan Life?

A Yes.

Q And what did you do there?

A I was in the Controllers Department.

Q And that was from what year to what year?

A '53 to '55, approximately.

Q Prior to that you worked with the Department of Justice?

A Yes; that's correct.

Q Doing what?

A Basically accounting type activities.

Q Do you recall the Tobacco Institute or someone on its behalf contacting you to gather information in an attempt to dissuade Allstate from offering preferred rates for non-smokers?

MR. PARRISH: I object to the form of the question.

BY THE WITNESS:

A What does that mean?

MR. WEBB: You can answer the question.

BY MR. EDELL:

Q You can answer the question.

A I can answer the question?

I don't recall that.

85758893

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Butts http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Q Do you recall someone contacting you on behalf of the Tobacco Institute in order to gather information in order to help them dissuade Allstate from advertising its preferred rates for non-smokers?

MR. PARRISH: I object to the form of the question.

BY THE WITNESS:

A I can't recall that.

MR. EDELL: Okay. Would you mark that, please.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 1, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q Mr. Noha, I'm going to show you a document which has been marked as Noha 1 for identification.

It appears to be a letter from Arthur J. Stevens, senior vice-president - general counsel for Lorillard to you of November 5, 1979, with carbon copies going to P.R. Tisch, C.H.

85758894

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Judge, and D.H. Chookaszian.

A Yes.

Q Do you recognize that letter, sir?

A It's addressed to me; so, it's obviously something I saw at some stage. But I just don't have a strong recollection of it.

Q The handwriting on that copy is very poor. I don't know whether you recognize the handwriting.

Mr. Webb, I don't know whether you have a better copy available.

MR. WEBB: I don't have, Mr. Edell. I have copies. I basically have the same thing you have there.

BY THE WITNESS:

A This looks like my scrawl --

BY MR. EDELL:

Q Can you tell --

A (Continuing) -- in the corner.

Q Can you tell what it says?

A No.

It looks like it's to Phil Engle from me. And I can't recall -- I mean I can't read to you what it -- I can't make out what I

85758895

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

said.

But if it's anything to do with pricing for this, I would have, as a matter of course, turned it over to Phil Engle.

Q Okay. Does your review of this document refresh your recollection as to the Tobacco's [sic] Institute -- the Tobacco Institute's attempt to dissuade Allstate from pursuing a course of action of offering preferred discount rates for non-smokers?

MR. SHAPIRO: Object to the form.

BY MR. EDELL:

Q If you want, I'll show you Page 2 again.

A Yeah; would you please?

Q Where it says:

"You will be interested to know that during the past summer, when the Tobacco Institute first learned of Allstate's plan to offer a nonsmoker discount, and in an effort to perhaps dissuade Allstate from that course of action by supplying background data, the Tobacco Institute, through me, sought assistance from CNA".

A I see the letter. I read it.

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz://legacy.library.ucsf.edu/docs/gfhl0001

I just don't have a strong recollection of any active participation or personal role that I may have played in this.

Q All right. We've already established that Mr. Tisch was on the Board of Directors of CNA, Loew's Theatres, and Lowe's Corporation; correct?

A Yes; I believe so.

Q All right. Mr. Chookaszian, he was a member of the Board of Directors of CNA; is that correct?

A No; that's not correct.

Q No?

Q What was his position with CNA?

A I believe he was vice president and controller at that period of time.

Q Was he ever a member of the Board of Directors?

A No; he was not.

Q Do you recall having communicated to Curt Judge your request for information concerning the subject matter of cigarette smoking and health?

A I know I must have mentioned it casually, but I can't recall when or how.

85758697

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttons http://www.industrydocuments.ucsf.edu/docs/gfhl0001

Q Who is Mr. Lewis, Steven Lewis is it?

A Steve Lewis was -- is no longer with CNA.

He was a member of the Marketing Department, and was an actuary on the life side of the business primarily.

Q And what were his responsibilities?

A I would -- At what time? At what period of time?

Q 1978 forward; 1978 to 1982.

A I would answer you by saying that in the very broad sense he was an actuary involved in the pricing and product development side of the life company primarily.

It changed from time to time where he got distribution and things of that nature; but that's probably a good broad categorization of his duties.

Q When you say "an actuary", what does an actuary do?

A Many things in my corporation.

The general term refers to a professional designation that's achieved either on the life side or the casualty side of our business; in rare occasions on both sides, with

85758898

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

people undergoing rigorous study and training and successfully completing a whole series of tests, six or eight, might be more, I can't recall, but achieve a designation of an actuary.

And it's primarily people who deal with the statistical side of our business in terms of pricing and reserving issues.

Q What does the designation FSA stand for; do you know?

A I was afraid you were going to ask me that. It probably deals with the life actuarial designation as opposed to a casualty; and Phil Engle will kill me for not knowing.

Q You don't have to put that on the record.

Do you recall Mr. Lewis conducting an investigation or an analysis to determine the viability of offering non-smoker discounts?

A I would think Phil would have had Steve Lewis do that.

Q When you say "Phil", you're talking about Phil Engle?

A Phil Engle.

MR. EDELL: Will you mark this, please.

85758899

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

(WHEREUPON, Plaintiff's Exhibit, Noha No. 2, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q I'm going to show you a document we marked as Noha 2 for identification.

Would you tell us whether or not you recognize the document, please?

MR. SHAPIRO: Would you just tell us what it is?

MR. EDELL: Yes. I'll tell you what it is. I thought I'd show it to him first.

It's a memo from S.H. Lewis to P.L. Engle of September 25, 1978. RE: Non-smokers discounts.

MR. SHAPIRO: Is this within the scope of the Order, or does it have something to do with the deposition?

MR. EDELL: If you have an objection, Mr. Shapiro, you can make it.

MR. SHAPIRO: My objection is it just seems that you're beginning to go well beyond the scope of the Order in terms of

85758900

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

communications between CNA and Loew's on smoking and health.

MR. WEBB: You know, Mr. Edell, maybe this Defendant -- I'm not -- I've told Mr. Noha that under the terms of Judge Decker's Order this could be a very short deposition.

On the other hand, I recognize your need to try to achieve information that could certainly be relevant to your lawsuit; so, I'm trying to, at least as Mr. Noha's counsel, to give you the courtesy and the leeway to cover the material.

But obviously reading Judge Decker's Order, is it your intention to get into those critical matters in the relatively near future in your questioning?

MR. EDELL: Well, I touched upon it earlier, and we will get into it in greater detail.

MR. WEBB: Well, I'm not objecting nor ordering the witness not to answer under Judge Decker's Order at this point.

But I'm simply stating for the record that it appears to me that, not so much

85758901

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support http://www.industrydocuments.ucsf.edu/docs/gfhl0001

this question, but many of the earlier questions are well beyond and far beyond the scope of Judge Decker's Order, which clearly limited on its face to conversations about cigarette smoking and health hazards that may have occurred between Mr. Noha and either of the Tisches or Mr. Pollak; and that anything beyond that goes beyond Judge Decker's Order in that he felt it to be burdensome and unnecessary to Rule 26-C.

I've taken much of your questions at this point to be background in nature, but I want to state for the record that I think we've gone far beyond the Order; and that I think it would be appropriate to try to get into the part of the witness' testimony that Judge Decker found to be relevant.

Again, I'm not ordering the witness not to answer. I'm simply making a statement on the record, and, well, let us proceed.

MR. EDELL: Just so my position is clear on the record, Mr. Webb, at the time that we appeared before Judge Decker, which was sent back in December of '85, the only information

2068C/co

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

that I had to offer Judge Decker at that time concerning the relevance of my taking this witness' deposition was the information concerning common members of the Board of Directors.

At that time I, not like you, did not have the benefit of some of the documents, which you were kind enough to furnish to me after that proceeding.

The documents refer to communications not only between Mr. Noha and other members of the Board of Directors of CNA and Loew's Corporation, but apparently they refer to communications between Mr. Noha and, for instance, Mr. Judge, who was never a member of the Board of CNA.

It also refers to communications between Mr. Noha and Mr. Stevens, who was never a Board of Director member of any of the entities.

I would suggest to you that Judge Decker, when he made his decision, was also unaware of these facts; and I think that if he was aware of those facts at that time, he

85758903

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

would permit me to go into questions concerning communications between this witness and people at his direction with people who were not only members of the common Board of Directors, but who also acted either in an official capacity, such as vice president and general counsel for Lorillard, or president of Lorillard.

MR. WEBB: Well, let me state for the record then that first of all I have not objected to any question you had concerning dialogue or conversations or discussions between this witness and Mr. Stevens or Mr. Curtis Judge.

And I can't predict what Judge Decker would do if he were given any additional information that you want to provide him.

What I do know is that in your motion in opposition to my motion to quash you made it very clear to Judge Decker, and Judge Decker made it very clear in his ruling of December 4th, that the linchpin or thread of relevancy that is present here is the

85758904

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz http://www.industrydocuments.ucsf.edu/docs/gfhl0001

possibility that this witness had conversations with principles, the Board of Directors of Loew's Theatres, Inc., concerning a limited subject matter of cigarette smoking and harm to one's health because of cigarette smoking; and that that was the thread of relevancy that prevented Judge Decker from quashing this entire subpoena.

Looking at that subject matter, and being very gracious towards yourself, as well as interpreting Judge Decker's Order, certainly even if you're allowed to ask questions concerning conversations and discussions with people other than the three common Directors, that are the specific limitations of Judge Decker's Order, if we are allowed to go beyond that, to avoid running back to Judge Decker, and to avoid taking up everyone's time unnecessarily, as particularly the witness', we have to agree that certainly the same limitation would apply; that it would be conversation with Curtis Judge and/or Art Stevens or any other principal of Lorillard which dealt with that subject

85758905

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

matter, which was the thread of relevancy that you used to take the deposition.

And, so, most of your questions, if not all of them, except for one or two, have not dealt with that subject matter of communications to somebody concerning health hazards and cigarette smoking, and what this witness may have told them which imparts knowledge to them about the subject matter, which you believe might aid your lawsuit because of the claims you have, particularly in Count III of your Complaint.

And, so, I state that because I'm not really going to -- I'm not quarrelling with whether or not you might inquire about principles other than the three Directors. I haven't objected.

But the subject matter ought to be limited to the subject matter of relevancy. And that's the point I'd like to make. And you may proceed.

MR. PARRISH: I think the record also should reflect that the documents to which you refer, Mr. Edell, I believe were provided to

85758906

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

you within a very few days, three or four days, after the hearing in front of Judge Decker.

And to my knowledge, you made no application to Judge Decker to modify the terms of that order after you reviewed those documents; and, furthermore, you did not seek an appeal from Judge Decker.

So, I think it's totally inappropriate for you at this point to try to change the substantive importance of the Order.

MR. SHAPIRO: Can I just bring this full circle?

My objection is not the comments between Mr. Noha and Mr. Judge or Mr. Stevens. I do believe that from Lorillard's document production you were aware of certain communications, you know, that might if they had at least correspondence from Mr. Judge or to Mr. Noha.

So, I don't think that comes as a surprise in terms of your application for this deposition.

85258907

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

My objection was simply that the document that you referred to, the most recent exhibit that you had marked, seemed to have nothing to do, as far as I could ascertain it, to communications between Mr. Noha and either members of the Board of Directors or other executives of Loew's Theatres or Loew's Theatres, Inc. or Lorillard.

And that was the reason for the objection. It seemed to be dealing with purely internal CNA matters; and that's why I thought we would be getting to get beyond the scope of the Court's Order.

MR. EDELL: Everybody is using up my three hours.

BY MR. EDELL:

Q Mr. Noha, you've had an opportunity to review Noha 2 for identification.

Do you remember seeing that document, sir?

A I can't recall specifically.

I recognize the names and the subject matter.

Q Do you recognize the handwriting on the

85758908

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/gfhl0001

first page of that document?

A No.

It's not mine.

Q One of the bases for offering preferred rates for non-smokers was the incidents of mortality in smokers as opposed to non-smokers; is that correct, sir?

MR. SHAPIRO: Objection to form.

BY THE WITNESS:

A Would you please restate that or repeat the question?

(WHEREUPON, the requested portion of the record was read.)

BY THE WITNESS:

A I believe so.

BY MR. EDELL:

Q And do you recall what the difference in mortality was between smokers and non-smokers?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A No; I don't.

85758909

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/gfhl0001

BY MR. EDELL:

Q It was sufficient, however, to warrant your decision to offer preferred rates for non-smokers; is that correct, sir?

MR. PARRISH: Object to the form of the question. It also mischaracterizes the witness' testimony.

MR. SHAPIRO: I think you summed up testimony that doesn't exist.

Why don't you just ask the witness why they did it?

BY MR. EDELL:

Q Sir?

A Repeat your question, please?

(WHEREUPON, the requested portion of the record was read.)

BY THE WITNESS:

A My decision to offer the preferred rate was based on keeping up with competition, and to provide a continuing viable market for our distribution system.

By the time we did it, there were -- the vast majority of companies that we considered

85758910

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/gfhl0001

our competition who were offering the non-smokers discount, and we felt that it might put our agency plan at a disadvantage given our markets and given the nature of our markets and the nature of our distribution system, we might put ourselves at a competitive disadvantage.

And, so, we decided to go. We used the studies that other companies had used, as I recall, as a basis for filing our rates.

BY MR. EDELL:

Q When you say "the studies", are you talking about -- What studies are you referring to?

A I believe it -- Because this took place over quite a period of time, I believe the State Mutual --- Was it State Mutual? Was that the name of the company?

Q Yes. I believe so.

A I believe it was the State Mutual Study.

Q What aspect of the State Mutual Study did you rely upon, sir?

A I didn't rely on it.

In fact, I don't believe I ever read the State Mutual Study. All of that data was

85758911

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Browse http://www.industrydocuments.ucsf.edu/docs/gfhl0001

reviewed by the Actuarial Departments within CNA; and the valuations of their methodology and data were made, but I never read the study myself.

Q Did the study deal with the mortality incidents in smokers versus non-smokers?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A I never read it; so, I assume that that was a part of it.

Whether that was all of it or not, I can't recall, because I never read the study.

MR. EDELL: Could you mark this, please.

(WHEREUPON, Plaintiff's Group Exhibit, Noha No. 3, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q Mr. Noha, I'm going to show you a document or series of documents, the first one of which is a letter directed to you from Arthur J. Stevens of November 13, 1979, the first paragraph of which states:

85758912

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/gfhl0001

"Further to my letter of November 5th, I am pleased to enclose a statistical analysis of the State Mutual Life materials prepared by the Director of Statistics at The Tobacco Institute. I am certain that Dr. Kastenbaum's comments will mean far more to you and the staff at CNA than they do to me."

Then it a attaches a letter from Marvin Kastenbaum with the Tobacco Institute of November 6, 1979, as well as a memorandum prepared by Mister -- Dr. Kastenbaum to Arthur J. Stevens of November 6, 1979.

Subject: Mortality Differences between Smokers and Nonsmokers, M.J. Cowell and B.L. Hirst -- H-i-r-s-t -- State Mutual Life Assurance Company of America; which attaches the actual study published by State Mutual Life Assurance Company of America, October 22, 1979.

Do you recall receiving that material, sir?

A Well, it has my name on it, and obviously it was received in my office; but I cannot tell you that I recall at all ever reading through all this data.

85758913

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz://www.industrydocuments.ucsf.edu/docs/gfhl0001

And I would tell you that in the normal course of events, it could have gone right to Phil Engle.

Q Mr. Noha, is it your testimony that the difference in mortality between smokers and non-smokers had no part in CNA's decision to offer preferred discounts for non-smokers?

MR. SHAPIRO: Objection.

MR. WEBB: I am going to object to that question, and I'm going to order the witness not to answer in light of Judge Decker's Order.

Mr. Edell, I've given you total leeway to inquire into the internal decision making of CNA, and into the -- and you haven't even gotten into the part that Judge Decker said you could go into, which is discussions of cigarette smoking and hazards to your health.

But that question there, clearly in my judgment, not only steps over the line, but the question is very unfair for this witness to answer in light of his state of knowledge based on what he has told you about what his

cc/3891

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttp://www.industrydocuments.ucsf.edu/docs/gfhl0001

role was in this proceeding.

And if we don't stop it at some point, we're going to be here all day. I'm asking the witness not to -- I'm ordering the witness not to answer that question under Judge Decker's Order.

You may proceed.

BY MR. EDELL:

Q Mr. Noha, you told us previously that you had had discussions with Lawrence Tisch concerning CNA's decision to offer a preferred discount for non-smokers?

A I believe I said -- And if I didn't state it in that way, what I intended was that I'm sure at some stage I mentioned to Larry Tisch that we were looking into this as a possibility in view of what was happening in the marketplace.

Q And do you recall what his response was?

A His response would have been, and what it has always been, that I had to do what was right for CNA.

Q Were there any discussions between you and Mr. Tisch concerning the impact that the decision by CNA to offer preferred discount rates

05/08/15

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd://www.industrydocuments.ucsf.edu/docs/gfhl0001

for non-smokers would have on Loew's Theatres?

A No specific discussion.

I obviously was aware that Lorillard was in the business of selling cigarettes, and we're in the business of selling insurance; and the non-smokers discount by one subsidiary versus another who was selling cigarettes could have some impact.

But we never had any specific discussion on that, nor did I with anyone else.

Q Do you recall CNA and Lorillard jointly preparing a statement concerning the introduction of non-smoker discounts?

MR. SHAPIRO: Object to the form.

BY THE WITNESS:

A Well, I cannot recall the working together with Lorillard, whether or not the Marketing Department had any contact.

I have no idea, but I did not work on any such statement.

MR. EDELL: Would you mark this for identification, please.

85758916

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Buttons http://www.industrydocuments.ucsf.edu/docs/gfhl0001

(WHEREUPON, Plaintiff's Exhibit, Noha No. 4, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q I'm going to show you a document we have marked as Noha 4 for identification.

At the top of the page it says ABSTRACT in upper caps. It's has a handwritten date of 4-3-80, and it has some handwritten notes.

Do you know what that document is, sir?

(WHEREUPON, a discusion was held off the record.)

BY THE WITNESS:

A Obviously it deals with a non-smoker discount and CNA offering one.

But I can't recall ever having read this. And those are not my -- It's not my handwriting on it; so, I may have seen it, but I can't recall it.

BY MR. EDELL:

Q Let me direct your attention to Paragraph 9 where it says:

85758917

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/gfhl0001

8

"It is recognized that the introduction of non-smokers discount could prove embarrassing to the Loews Corporation and Lorillard Tobacco Company; to minimize this potential, CNA and Lorillard should jointly prepare a carefully constructed statement pointing out that the introduction of non-smokers discount in no way either supports or refutes the contention that smoking causes health defects (no cause-effect relationship has been proven in clinical studies)."

Then it goes on to -- It goes on further. I don't think it's necessary to read anything further, unless you think it's necessary.

Does that is refresh your memory, sir, about CNA and Lorillard getting together to prepare a joint statement?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A I cannot recall CNA and Lorillard getting together and preparing a joint statement on this

2057898

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttp://www.industrydocuments.ucsf.edu/docs/gfhl0001

subject.

BY MR. EDELL:

Q Do you recall the question -- Strike that.

Do you recall the proposal for CNA and Lorillard to get together to prepare a joint statement ever being discussed?

A I personally cannot recall that.

Q Whose responsibility would that have been if that type of proposal had been adopted?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A I would think that it would have come to me from Phil Engle.

BY MR. EDELL:

Q Phil Engle?

Do you recall there being a decision not to advertise the preferred discount rates for non-smokers?

A I cannot recall that.

But we do very little advertising at all; and the bulk of our advertising is directed toward our agents as opposed to trying to push a

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd://www.industrydocuments.ucsf.edu/docs/gfhl0001

given product under the CNA name, since we deal with independent agents.

And it's our problem to get the agent to recommend our company as opposed to expecting a customer to come in and talk to an independent agent who hopefully will say CNA instead of INA or someone else.

So, while I can't recall that, it would not have been unusual for us not to advertise a given product, certainly extensively.

Q Is it your testimony, sir, that there was not a conscious decision by CNA not to advertise or otherwise promote non-smoker discounts?

A It's my testimony that I can't recall it being a conscious decision not to advertise it; and, further, it would not at all be unusual for us not to advertise a given product.

Q Let me direct your attention to Paragraph 10 of Noha 4 for identification where it states:

"CNA should further refrain from advertising or otherwise promoting non-smoker discounts, except to note in promotions directed toward agents that CNA has non-smoker discounts and except for that promotion

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/gfhl0001

implied whenever we promote our low rates to agents."

See that? Does that refresh your memory, sir, that there was a conscious decision that CNA should not advertise its preferred rates for non-smokers?

MR. PARRISH: Object to the form of the question.

MR. WEBB: I object on the grounds that he's already answered that question twice, that he has no recollection of that occurring.

And the form of your question suggests that you've established that it did occur.

MR. EDELL: Well, that's why I showed him the documents to see if it refreshed his recollection.

BY THE WITNESS:

A I think this merely supports what I said.

BY MR. EDELL:

Q You are referring to this (indicating). You are referring to Noha 4 for identification?

A Yes.

Q You told us that Mr. Lewis is no longer

85758921

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

with CNA; is that correct?

A That's correct.

Q Do you know where he is?

A I don't know the name of the company he is with.

He left over a year ago. I believe it's some company in Illinois.

Q An insurance company?

A I don't know that it's an insurance company or a managing general agent of sorts, but it's in the insurance field.

Q Did you ever discuss with Lawrence Tisch or Preston Tisch the question as to whether or not cigarette smoking caused disease in people?

A No; I did not.

Q Did you ever discuss that with Curt Judge?

A No; I did not.

Q Is there any reason why you never discussed that subject with them?

A No specific reason.

Q Was there any direction from anyone that the subject of cigarette smoking and health should not been discussed among members, common members,

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support https://www.industrydocuments.ucsf.edu/docs/gfhl0001

of Board of Directors?

A No.

Q When you were attempting to ascertain whether or not a preferred discount rate should be offered to non-smokers, am I correct that one of the considerations was whether or not cigarette smoking did cause disease in human beings and, therefore, might affect your potential insureds; correct?

MR. PARRISH: Object to the form of the question.

Are you talking about causation in a scientific or medical sense?

MR. SHAPIRO: I'd just object that having now answered the questions for which the deposition was sought, that is discussions with common directors and/or executives of Lorillard, it seems to me that we've gone beyond the scope of the Order.

MR. PARRISH: Can I get a response to my question, because if you're asking him, Marc --

MR. EDELL: Do you have an objection as to the form of the question, Mr. Parrish?

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttp://www.industrydocuments.ucsf.edu/docs/gfhl0001

And if I'm wrong, and I should have rephrased it, and you want to make an objection at the time of trial, the Judge may very well find that your objection was correct, and, therefore, I can't use the response by the witness.

MR. PARRISH: If you will respond to my question, perhaps I'll withdraw my objection.

MR. EDELL: That's okay. You don't have to withdraw your objection.

BY THE WITNESS:

A May I have the question repeated now, please?

MR. EDELL: Sure.

(WHEREUPON, the requested portion of the record was read.)

MR. PARRISH: Same objection.

BY THE WITNESS:

A Our entire approach was really predicated upon the need to compete.

And the fact is that I was always very, very concerned about offering discounts for non-smokers for a number of reasons.

85758924

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Digitized by the Internet Archive http://www.industrydocuments.ucsf.edu/docs/gfhl0001

One was because we, you know, we're going to be reducing our premiums. Secondly, because I felt it would be very difficult, whatever validity there was to control the situation.

All we have is a warranty that somebody smokes or doesn't smoke, and whether they either quit or began one day after or one day before, I really have no way of knowing.

So, we viewed this strictly as a question of maintaining our market, where we deal with multiple insureds, where we deal with agents that represent multiple companies, and brokers that represent other companies, and one of maintaining our competitive position in the marketplace.

BY MR. EDELL:

Q So, is it your testimony that the evidence of statistically significant association between cigarette smoking and mortality did not play a part in your decision making process?

MR. PARRISH: I object to the form of the question.

MR. WEBB: That's a question that I

85758925

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

objected to 10-minutes ago on the grounds that it goes beyond Judge Decker's Order, as do all the other questions.

But that particular question is very unfair in light of the witness' answer; and I order the witness not to answer the question.

MR. EDELL: I think goes directly to the witness' credibility.

There are documents here which state quite clearly that the mortality incidents in smokers as opposed to non-smokers was one of the bases for offering the preferred discount rates.

And now the witness sits here and says it has nothing do with it.

MR. WEBB: Well, first of all --

MR. EDELL: I think I'm entitled to examine this witness on his credibility.

I don't think Judge Decker would preclude me from cross-examining the witness on his credibility.

MR. WEBB: Well, I think that's precisely what Judge Decker was attempting to allude to

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Built with http://www.industrydocuments.ucsf.edu/docs/gfhl0001

in the paragraph that I published in the beginning of this deposition.

And I order the witness not to answer the question under Judge Decker's Order.

MR. EDELL: Just so we know what we're talking about, I'll mark a couple of exhibits so we have it for the record.

Would you mark this as five.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 5, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q I'll show you a document which we marked as Noha 5 for identification. It's dated March 7, 1980, to S.E. Lewis. RE: Non-smokers Discount. Introduction. It says that:

"This memorandum is designed to substantiate the need for a non-smokers discount on CNA's individual life product line."

I direct your attention to Page 2,

85758927

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Butts http://www.industrydocuments.ucsf.edu/docs/gfhl0001

and see if that refreshes your memory, sir, as to whether or not there was in addition to the need to offer life insurance at competitive rates, another reason for offering preferred discount rates for cigarette smokers -- non-cigarette smokers.

MR. WEBB: Mr. Edell, you're directing his attention to one particular paragraph on Page 2?

MR. EDELL: No.

MR. WEBB: Okay.

BY MR. EDELL:

Q Mr. Noha, please take your time and review the document.

The area that I was speaking about, however, is referred to on Page 2; but, please, I don't want to try to mislead you. Take a look at the document. Read it to your satisfaction.

(WEEREUPON, the witness complied.)

MR. WEBB: Mr. Edell, has this document been shown to him in connection with refreshing his recollection on a particular point?

85758928

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd://www.industrydocuments.ucsf.edu/docs/gfhl0001

MR. EDELL: Do you want the question read back?

MR. WEBB: I think I lost the question also. I think I know what it is, but I would like it read back, if I could.

(WHEREUPON, the requested portion of the record was read.)

MR. WEBB: My objection to that question is that you've shown this witness a document to refresh his recollection, which on the face of the document he's not -- he was not copied, and he's not seen; so, it could not possibly refresh his recollection.

MR. EDELL: That's not the test, Mr. Webb. You know that. I could show this witness almost any document to see if it refreshes his memory.

He's already testified who Mr. Lewis was. He also testified with respect to an inquiry into the area of the viability of offering non -- I'm sorry -- preferred discounts for non-smokers.

It's on the stationery of CNA. I'm

85758929

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

certainly entitled to see whether or not it refreshes his memory.

BY MR. EDELL:

Q Mr. Noha?

A Now can I have the question one more time?

(WHEREUPON, the requested portion of the record was read.)

BY THE WITNESS:

A Let me answer that question in this manner: I have stressed each time, I believe, in response to that general category of question that we were most concerned about the competitive climate.

And I think in this memo, the first page states that that is the most -- one of the most compelling reasons for CNA instituting non-smokers discount.

The second page, it says:

"In addition to the prospect of reduced sales mentioned above, CNA could also suffer reduced profits if we do not adopt a discount for non-smokers. At this juncture,

85758930

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd/www.industrydocuments.ucsf.edu/docs/gfhl0001

it is important to note that we are not assuming any causal relationship between smoking and increased mortality. There is, however, reliable evidence of a statistically significant association between the two factors; the class of smokers sustains a level of mortality about 70 to 100-percent higher than the class of non-smokers."

Then they go into the origin of the statistics and the State Mutual Report again.

This is one of those origins. And I don't say that those studies were not used to justify our smoker/non-smoker situation.

I do say that we were aware of the statistical relationship. We were not in any position to determine a causal relationship. We are not in that business, making those determinations.

But we were very much aware that in the marketplace any number of companies -- As a matter of fact, the majority of our competitors were offering this discount. And in order to maintain our position, we did the same.

And we relied on these studies,

85758931

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Stanford Library http://www.industrydocuments.ucsf.edu/docs/gfhl0001

which did show this statistical relationship.

BY MR. EDELL:

Q What does it mean where it states:

"The class of smokers sustains a level of mortality about 70-percent to 100-percent higher than the class of non-smokers"?

MR. PARRISH: I'm going to object to the question. It's outside the scope of Judge Decker's Order. There's no foundation for it.

MR. WEBB: I'm going to object on the grounds that this witness has already answered that question by telling you that he's not read those studies.

And since he hasn't read them, he totally lacks personal knowledge to evaluate them.

But to simplify things, I'm just going to raise Judge Decker's Order, and I'm going to order the witness not to answer the question.

You you may ask your next question.

BY MR. EDELL:

Q Sir, are you familiar the firm of Shook,

85758932

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz://www.industrydocuments.ucsf.edu/docs/gfhl0001

Hardy & Bacon?

A I've heard the name.

I don't know them very well. I met a few people.

Q You say you met a few people? You met them recently or over the years?

A No.

Q Mr. Parrish?

A Yes.

Q Were you aware that Shook, Hardy & Bacon has represented Lorillard over a long period of time concerning the issue of cigarette smoking and health; and, in particular, has represented them concerning legislative interests and products liability interests?

A I know they've represented Lorillard. How long or in what capacity, I really am not conversant with that.

(WHEREUPON, Mr. Courtney exited the Deposition Room.)

BY MR. EDELL:

Q Do you recall Shook, Hardy & Bacon providing CNA information concerning cigarette

85758933

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Stuttgart http://www.industrydocuments.ucsf.edu/docs/gfhl0001

smoking and health?

A Not personally.

They may have. I am not aware of that.

MR. EDELL: Mark this for identification, please.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 6, was marked for identification as of 1-6-86.)

BY THE WITNESS:

A Or at least I don't recall that.

MR. EDELL: Would you also mark this, please.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 7, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q I'm going to show you first a letter which we've marked as Noha 6 for identification.

It's from Arthur J. Stevens, general counsel of Lorillard, to Steve Lewis of November

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttd://www.industrydocuments.ucsf.edu/docs/gfhl0001

30, 1979; carbon copies to Edward J. Noha, Dennis H. Chookaszian, and see if that refreshes your memory, sir?

A Well, I'm shown as receiving a copy, obviously.

I assume it's referring to that package you showed me sometime ago.

Q I think it refers to additional information, sir.

A Well --

Q Here's a letter of --

A I'm shown.

I don't have a distinct recollection of the particular letter, but I obviously received a copy.

Q I'm going to show you a letter of November 26, 1979, which was addressed to Arthur J. Stevens from William W. Shinn of Shook, Hardy & Bacon.

Do you recognize that letter, sir?

MR. BLAKE: Was that seven?

MR. EDELL: I think so; seven.

THE COURT REPORTER: Yes.

MR. EDELL: Seven.

85758935

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/gfhl0001

BY THE WITNESS:

A I just scanned it, and I haven't read it word for word, but I just don't recall ever seeing this letter.

(WHEREUPON, Mr. Courtney re-entered the Deposition Room.)

BY MR. EDELL:

Q Do you recall there being any discussions that -- by offering -- by CNA's offering a preferred discount rate for non-smokers, that it would be some type of admission on the part of Loew's that cigarette smoking did affect -- did, in fact, have an affect on human beings?

A No.

I don't recall any discussions along those lines.

Q Sir, would you agree that offering preferred discount rates for non-smokers is a total phony?

MR. PARRISH: Object to the form of the question.

MR. SHAPIRO: I object to it.

Again, it has nothing to do with the

85758936

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/gfhl0001

terms of the Order.

BY THE WITNESS:

A I need for you to -- That's such a broad statement.

If you could just elaborate on what you mean there.

MR. EDELL: Mark this for identification.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 8, was marked for identification as of 1-6-86.)

BY MR. EDELL:

Q I'm going to show you a document marked as Noha 8 for identification.

It's a letter of July 23, 1979 from James C. Bowling to William Kloepfer.

Did you ever hear of either of these individuals, sir?

MR. SHAPIRO: Since it's futile to make an objection that it's outside of the scope of the Order, I probably shouldn't do it; but, again, we seem to be going beyond the framework of this deposition.

85758937

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

BY THE WITNESS:

A No; I don't.

These names, they are -- do not ring a bell with me.

MR. SHAPIRO: Probably because they are not on the Loew's Board of Directors, which I, again, thought had something to do with the deposition.

BY MR. EDELL:

Q Did the Tobacco Institute or Lorillard attempt to convince you that CNA should not offer preferred discount rates for non-smokers?

MR. PARRISH: Object to the form of the question.

BY THE WITNESS:

A No; they did not.

BY MR. EDELL:

Q And you are not aware of any such attempt made by either of those two entities to influence Allstate's decision; is that correct?

MR. SHAPIRO: Object to the form.

MR. PARRISH: Objection: Asked and answered.

85758938

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Digitized by the Internet Archive http://www.industrydocuments.ucsf.edu/docs/gfhl0001

BY THE WITNESS:

A I'm not personally aware of that.

BY MR. EDELL:

Q When you say you're not personally aware of it, did you ever hear of that, sir?

Did anybody ever mention that to you?

A No.

You asked the question; so, I thought you must have something in mind. So, I thought I would be responsive and say truthfully I never heard of it.

Q Were you aware of the Tobacco Institute's attempt to influence Occidental Life Insurance Company's -- Start all over again.

Were you aware of the Tobacco Institute's attempt to influence the Occidental Life Insurance Company with respect to its offering preferred discount rates for non-smokers?

MR. PARRISH: Object to the form of the question.

MR. WEBB: Mr. Edell, I'm going to object. Obviously he would have no way of -- no personal knowledge of that.

85758939

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/gfhl0001

But that question is indicative of the state this deposition has evolved to; and I simply -- I'm going to -- Since I happen to know that Mr. Noha, as the chief executive officer of CNA, has an important meeting scheduled, which is being delayed because of this particular proceeding, that I respectfully ask that you'd stick to Judge Decker's Order.

We've allowed you great leeway in covering information that is not there, not limiting you at all as to who inside Loew's Theatres, Inc. he may have had conversations with about the relevant subject matter.

And now we're off on a tangent dealing with information he may have about something called the Tobacco Institute influencing an insurance company called Occidental, which he had no nexus to.

I object, and order the witness not to answer the question. I respectfully ask: Do you know how much longer this deposition may last?

MR. EDELL: Roughly -- Avoiding these

85758940

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttz http://www.industrydocuments.ucsf.edu/docs/gfhl0001

long colloquies, probably not more than 15, 20-minutes.

Can I have that marked for identification.

MR. SHAPIRO: If you keep avoiding proper questions, we wouldn't have the colloquy.

MR. EDELL: I try my best.

(WHEREUPON, Plaintiff's Exhibit, Noha No. 9, was marked for identification as of 1-6-86.)

(WHEREUPON, a discussion was held off the record.)

BY MR. EDELL:

Q Mr. Noha, I'm going to show you a document we marked as Noha 9 for identification.

(WHEREUPON, Mr. Parrish exited the Deposition Room.)

BY MR. EDELL:

Q . It's a letter from Arthur J. Stevens, general counsel of Lorillard, to you, Mr. Chookaszian, and Mr. Levis of March 13, 1980,

85758941

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Browse this item at http://www.industrydocuments.ucsf.edu/docs/gfhl0001

which states:

"You may find the attachments regarding Occidental Life of interest."

And then it has a couple of attachments, which include correspondence from the Tobacco Institute to Occidental Life Insurance Company.

First, let me ask you, sir, do you recognize the handwriting on that document?

A Not on this front page. It is not mine.

I haven't read it word for word, but it is addressed to me, as well as to other people who were in the CNA organization; but I don't recall the document.

12

Q Do you recall whether or not Occidental at that time did offer preferred rates for non-smokers?

A I'm going to say no, because this is March of '80.

I don't know for sure. We could check that out.

(WHEREUPON, Mr. Parrish re-entered the Deposition Room.)

85758942

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Retrieved from http://www.industrydocuments.ucsf.edu/docs/gfhl0001

BY MR. EDELL:

Q Was CNA a member of the Health Insurance Association of America and the American Counsel of Life Insurance?

A Was or is or --

Q Both.

A (Continuing) -- both?

Help me out a second, Bill. We were, I think, health insurance. We were -- I don't know whether we were in or out of that.

Counsel, are we still in? I'm not sure. I can't remember.

MR. SHAPIRO: You are the only one being deposed. If you don't know, just tell Mr. Edell.

BY MR. EDELL:

Q Whose John T. Snor (phonetic)?

A John T. Snor?

Q Yes.

Do you recognition that name?

A No; I do not.

Q Did CNA ever conduct an analysis of its own experience to determine whether or not there was a difference in mortality between cigarette

85758943

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Buttons http://www.industrydocuments.ucsf.edu/docs/gfhl0001

smokers and non-cigarette smokers?

MR. PARRISH: I object to that question. Unless there's some foundation that that material or information was communicated to --

MR. EDELL: I'll ask him --

MR. PARRISH: Why don't you ask the right question first and we'll save a lot of time if you lay the foundation.

BY THE WITNESS:

A Can we go back again?

(WHEREUPON, the requested portion of the record was read.)

BY THE WITNESS:

A Not that I'm aware. I doubt if it would have that data.

MR. EDELL: Thank you, Mr. Noha.

THE WITNESS: Thank you.

MR. EDELL: No cross-examination?

MR. PARRISH: Can we just take one minute?

MR. EDELL: I'm sorry. Thank you.

MR. PARRISH: You're welcome.

85758944

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/gfhl0001

MR. EDELL: You just refreshed my memory with respect to a question.

Never mind. Forget it.

MR. WEBB: Do you want to take a short break?

MR. PARRISH: This has nothing to do with it, but before the court reporter closes shop, I want to talk to Mr. Webb.

MR. WEBB: That's fine, but Mr. Noha is free to leave?

MR. PARRISH: As far as I'm concerned.

I have no questions.

MR. EDELL: Mr. Noha, thank you very much. Mr. Courtney, nice to meet you.

THE COURT REPORTER: Signature?

MR. WEBB: Have you been waiving signature?

MR. PARRISH: No.

MR. WEBB: We don't want to waive signature.

(WHEREUPON, a discussion was held off the record.)

(AND FURTHER DEPONENT SAITH NOT.)

cc/c8945

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf Retrieved from www.industrydocuments.ucsf.edu/docs/gfhl0001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF NEW JERSEY

ANTONIO CIPOLLONE, individually, and as Executor of the Estate of Rose D. Cipollone,

Plaintiffs,

vs.

No. 83-2864 SA

LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS INCORPORATED, a Virginia Corporation; and LOEW'S THEATRES, INC., a New York Corporation,

Defendants.

I, EDWARD J. NOHA, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on January 6, 1986; that I have read the foregoing transcript of my deposition, consisting of Pages 1 through 71 inclusive, and affix my signature to same.

_____
EDWARD J. NOHA, Deponent

SUBSCRIBED AND SWORN TO before me this___day of _____, A.D. 19__.

_____
NOTARY PUBLIC

85758946

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, KAREN E. BLAKEMORE, CSR and Notary Public, in and for the County of Cook and State of Illinois, do hereby certify that on the 6th day of January, 1986, at 10:15 A.M., at Suite 5100, One First National Plaza, Chicago, Illinois, the deponent EDWARD J. NOHA personally appeared before me.

I further certify that the said EDWARD J. NOHA was by me first duly sworn to testify and that the foregoing is a true record of the testimony given by the witness.

I further certify that I am not counsel for nor related to any of the parties herein, nor am I interested in the outcome hereof.

In witness whereof, I have hereunto set my hand and seal of office this 7th day of January, A.D., 1986.

Karen E. Blakemore
KAREN E. BLAKEMORE, CSR

85758947

http://legacy.library.ucsf.edu/tid/vsq07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/gfhl0001